

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOSEPH WILLIAM DROPALSKI,

Petitioner,

v.

BELINDA STEWART,

Respondent.

Case No. C06-5697 FDB

ORDER DENYING CERTIFICATE  
OF APPEALABILITY

This matter comes before the Court on petition for certificate of appealability.

On June 1, 2007, this Court denied Petitioner's post-conviction habeas corpus petition as time barred. Petitioner has filed a notice of appeal of that Order which this Court placed on the calendar as a petition for certificate of appealability.

A court will issue a certificate only when a petitioner has made "a substantial showing of the denial of a constitutional right ." 28 U.S.C. § 2253(c)(2). "Where a district court has rejected the constitutional claims on the merits, the showing required to satisfy § 2253(c) is straightforward: The petitioner must demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." Slack v. McDaniel, 529 U.S. 473, 484 (2000). A petition dismissed on procedural grounds has two components, one directed at the underlying constitutional claims and one directed at the district court's procedural holding. Id., at 484-85. Where the district court dismisses a petition on procedural grounds, a certificate of appealability "should issue when the


1 prisoner shows, at least, that jurists of reason would find it debatable whether the petition states a  
2 valid claim of the denial of a constitutional right and that jurists of reason would find it debatable  
3 whether the district court was correct in its procedural ruling.” Id., at 484.

4 Petitioner has not met this burden. Petitioner’s assertion that he is entitled to “gap tolling”  
5 and/or relief from the federal habeas corpus statute of limitations contained in the Antiterrorism and  
6 Effective Death Penalty Act, 28 U.S.C. 2244(d), is unpersuasive. The procedural bar is not  
7 debatable and Petitioner cannot demonstrate cause or actual prejudice. Additionally, it is not  
8 debatable that Petitioner cannot demonstrate actual innocence. Petitioner fails to set forth a  
9 debatable claim as to either a procedural bar or denial on the merits.

10 ACCORDINGLY;

11 The Certificate of Appealability is **DENIED**.

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13 DATED this 13<sup>th</sup> day of July, 2007.

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16 FRANKLIN D. BURGESS  
17 UNITED STATES DISTRICT JUDGE  
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